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* ADMITTED TO PRACTICE IN
COLORADO, UTAH AND HAWAII

Telluride
June 21, 2004

Hon. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington DC 20423-0001

ENTERED
Office of Proceedings

JUN 22 2004

Part of
Public Record

Attn: Arlene Jeffcoat,
Chief Records Officer
202-565-9016

Ms. Jeffcoat: Please deliver the attached filing to Secretary Williams. I understand this matter is scheduled for action by the Board on June 22, 2004. I would have filed this sooner but was unable to do so due to family responsibilities arising from my mother's death earlier this month, as I am her eldest son and had her power of attorney for her financial affairs. We are forwarding eleven copies of this filing to the Board by overnight courier for our formal filing of this attachment. Those copies will probably reach the Board on Wednesday, June 23, 2004.

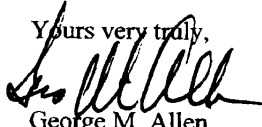
Re: Docket No. AB 33 (Sub-No. 132X)

Dear Secretary Williams:

This transmits the City of Creede Reply in Support of Motion to Strike All Filings Made in this Proceeding by Respondent Denver & Rio Grande Railway Historical Foundation. This Reply is responsive to the filing made by the Respondent Foundation on May 13, 2004.

Hon. Vernon Williams
June 21, 2004
Page Two

I thank you and the Board for your attention to this matter.

Yours very truly,

George M. Allen

Enclosure

cc: Thos. McFarland, Esq.
Robert T. Opal, Esq.
Raymond P. Micklewright, Esq.
Karl Morell, Esq.
Hon. B. J. Myers, City of Creede

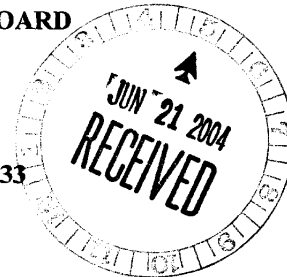
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BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES

UNION PACIFIC RAILROAD
COMPANY - ABANDONMENT
EXEMPTION - IN RIO GRANDE
AND MINERAL COUNTIES, CO

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DOCKET NO. AB-33
(SUB-NO. 132X)



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REPLY IN SUPPORT OF CITY OF CREEDE'S
MOTION TO STRIKE ALL FILINGS MADE IN THIS PROCEEDING
BY RESPONDENT DENVER & RIO GRANDE RAILWAY
HISTORICAL FOUNDATION

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Petitioner, City of Creede, by its attorney, George M. Allen, hereby submits its Reply in Support of its pending Motion to Strike All Filings by Respondent Denver & Rio Grande Railway Historical Foundation due to the repeated pattern of submission of wilfully false and fabricated statements to the Board by the Foundation.

**Further Apparent Misrepresentation To The Board in
the Foundation's May 13, 2004 Submission to the Board**

In the Foundation's opposition to the City of Creede's Motion to Strike, filed May 13, 2004, the President of the Foundation, Mr. Shank, claims that his false financial submission to the Colorado Department of Transportation, made in documents submitted to CDOT bearing June, 2002 dates, was the product of haste to meet a CDOT filing deadline. Specifically, Mr. Shank has claimed, in the May 13, 2004 filing by the Foundation,

[quoting from paragraph 5 of the Shank Rebuttal, signed under oath

on May 6, 2004] “ * * * as I have stated again and again, I signed everything in front of Terry Whelan in his Town Manager’s Office in South Fork, drove 100 miles to Durango over an 11,000’ mountain pass with terrible road construction, received a speeding ticket (71 in a 55) while leaving South Fork, added the few things itemized above from the Foundation’s Durango office and then took the package directly to CDOT. . . .”

As indicated in the attached Declaration Under Penalty of Perjury of the undersigned, reference to the records of Colorado court proceedings on the state court system’s on-line website, www.cocourts.com, fails to substantiate Mr. Shank’s claim of having received a speeding ticket on or about the date of his Foundation’s filing with CDOT on June 14, 2002, or, for that matter, on any date in the year 2002.

Mr. Shank has asked the Board to believe his account, and not that of former South Fork Town Manager Whelan, as to which of the two of them falsified the financial information in the Foundation’s June 14, 2002 CDOT submission (the CDOT grant application contains a now admittedly false claim the Foundation had more than \$2.2 million in a “savings” account at an unnamed bank). The Board will recall that Mr. Whelan says that he, Whelan, had nothing to do with the Shank or Foundation financial information provided to CDOT.

Mr. Shank’s lack of credibility lies at the heart of this proceeding, since in this case Mr. Shank asks us to accept his version of how it came to pass that even though he was being sued right and left in the 1990’s over everything from child support to credit cards to busted business deals, he

somehow had the wherewithal (as he claimed to the Board in his late 1990's Offer of Financial Assistance) to rehabilitate and restore service on 20+ miles of defunct high mountain railway.

We submit that Mr. Shank just makes up facts to suit his claims. If he received a speeding ticket, there is no record of it on the state court system's website, although the website does provide documentation of a 2001 speeding ticket received by Mr. Shank and even provides documentation of a matter as trivial as driving with expired license plates (for which Mr. Shank was ticketed in LaPlata County on February 27, 1998).

Conclusion

At the heart of this proceeding is credibility. Mr. Shank is simply not credible. No documentation supports his claim of having received a speeding ticket. No documentation supported the claim to CDOT that the Foundation had more than \$2.2 million in matching money for a requested \$10 million grant, as he ultimately admitted, after he was called on the point. No documentation supported Mr. Shank's claim to have donated over \$250,000 in cash to his Foundation and when confronted with evidence that he had made no such donation, he backed down and blamed his bookkeeper.


No documentation supports any of the OFA Financial Statement representation by Mr. Shank to being a man of wealth, capable of carrying out the obligations of his Offer of Financial Assistance. Instead the documentation, including the attached printout of court filings, reveals a man in constant financial trouble, sued over and over again in everything from small claims court (the S number on that attached database printouts [e.g., 1996S 001126], in regular civil actions (the CV numbers [e.g., 1995CV000272], and in divorce proceedings where child support was not paid [e.g.,

1986DR001285], as well as in foreclosure proceedings, such as the Rule 120 Deed of Trust case, 1998CV000103.

The record is overwhelming that essentially every submission made by the Foundation to the Board, going right back to the initial Offer of Financial Assistance, has contained substantial and material misrepresentations of fact. Six figure errors cannot be dismissed as immaterial or matters of mere oversight or neglect. These have been major and continuing misrepresentations and they demonstrate a pattern of apparent lying, even when there is no need to mis-state the facts, such as the claim to have received a speeding ticket en route to make a false (false by over \$2 million) filing with the Colorado Department of Transportation.

It is because of the repeated and ongoing pattern of misrepresentation that we have asked the Board to strike all of the Foundation's filing from the record of these proceedings.

Respectfully submitted,



GEORGE M. ALLEN
Counsel for City of Creede

**BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES**

UNION PACIFIC RAILROAD	 	DOCKET NO. AB-33
COMPANY - ABANDONMENT	 	(SUB-NO. 132X)
EXEMPTION - IN RIO GRANDE	 	
AND MINERAL COUNTIES, CO	 	

----- § -----

DECLARATION OF GEORGE M. ALLEN UNDER PENALTY OF PERJURY

----- § -----

George M. Allen hereby declares, under penalty of perjury:

1. Attached hereto are true copies of internet downloads from the proprietary website listing all Colorado court filings. The URL for the website is www.cocourts.com.
2. The search term used to identify matters of record relating to the President of the Denver & Rio Grande Railway Historical Foundation, Donald H. Shank, was "Donald Shank."
3. The search was made with regard to Mr. Shank for all files in all counties under all four categories (which are, civil, criminal, divorce and traffic).
4. While it is possible that Mr. Shank may have received a traffic violation citation without that citation appearing on the www.cocourts.com website, I regard that as being extremely unlikely. In my more than three years of making searches on the www.cocourts.com website, I have never found it to fail to have record of a Colorado judicial or legal proceeding which took place after establishment of the website. As I understand it, the website picks up all filings on the state judiciary database, which, in turn, picks up all proceedings throughout the State of Colorado. The extent of the data available on www.cocourts.com is accessible on the website itself.

5. The above statements are true and are affirmed by the undersigned under penalties prescribed by 18 U.S.C. §1001.

George M. Allen

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Details		Status: CLSD	Type: Money	
2	DONALD SHANK	Defendant	Num: 1995CV000272	La Plata County
Details		Status: CLSD	Type: Breach of Contract	
3	DONALD SHANK	Defendant	Num: 1996CV000236	La Plata County
Details		Status: CLSD	Type: Note	
4	DONALD SHANK	Defendant	Num: 1998C 000840	La Plata County
Details		Status: CLSD	Type: Money	
5	DONALD SHANK	Defendant	Num: 2001C 000147	La Plata County
Details		Status: CLSD	Type: Money	
6	DONALD BA SHANK	Defendant	Num: 1995S 000166	La Plata County
Details		Status: CLSD	Type: Other	
7	DONALD H SHANK	Respondent	Num: 1986DR001285	Arapahoe County
Details		Status: CLSD	Type: Registration of Foreign Decree	
8	DONALD H SHANK	Defendant	Num: 1998CV000036	La Plata County
Details		Status: CLSD	Type: Money	
9	DONALD H SHANK	Defendant	Num: 1998CV000103	La Plata County
Details		Status: CLSD	Type: Rule 120 Deeds of Trst Pub Trs	
10	DONALD H SHANK	Plaintiff	Num: 1998CV000161	La Plata County
Details		Status: CLSD	Type: Note	
11	DONALD HERBERT SHANK	Defendant	Num: 2001R 002426	Chaffee County
Details		Status: CLSD	Type: Motor Vehicle	
	BirthDate: 06/20/1949			
12	DONALD HERBERT SHANK	Defendant	Num: 1998R 000142	La Plata County
Details		Status: CLSD	Type: Motor Vehicle	
	BirthDate: 06/20/1949			
13	DONALD H SHANK	Defendant	Num: 2000CV000004	Mineral County
Details		Status: CLSD	Type: Declaratory Judgment	

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You can modify this search, free of charge.

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Details 1	DONALD HERBERT SHANK	Defendant Status: CLSD	Num: 2001R 002426	Chaffee County
	BirthDate: 06/20/1949		Type: Motor Vehicle	
Details 2	DONALD HERBERT SHANK	Defendant Status: CLSD	Num: 1998R 000142	La Plata County
	BirthDate: 06/20/1949		Type: Motor Vehicle	

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Status: CLSD **County Court,** Chaffee County
Case Num: 2001R 002426 **Div/Room:** 1 **Type:** Motor Vehicle
Case File Date: 10/03/2001 **Case Close Date:** 10/26/2001
E-Filed: N **Appealed:** N

Judge or Magistrate**Name** WILLIAM PEAT ALDERTON **Bar Number:** 6306**Agency**

Agency: CHSD Chaffee County Sheriff Dept **Agency Case:**
Ticket/Summons Num: 14162 **Arrest Num:**

Sentence Date: SPLE 10/26/2001**Parties**

Party	Name	Birthdate	Gender	Race
Defendant 1	SHANK, DONALD HERBERT	06/20/1949	M	W

Charges

Count	Status	Statute No.	Charge Description	Class
1			Charge Amended MTC-1101 (1) Exceeded Speed Limit 10-19 mph TIA	
		Offense Date: From: 09/28/2001 To: -	Time: -	BAC: 0
		Arrest Date: -	Time: -	Ticket Num: 14162

Count	Status	Statute No.	Charge Description	Class
1			Main Charge MTC-1101 Speeding 1-4 mph over posted limit TIA	

Offense Date: From: 09/28/2001 To: — **Time:** — BAC: 0

Arrest Date: — **Time:** — **Ticket Num:** 14162

Plea: Plea/Mail

Date: 10/26/2001

Disposition: Gilty Lesser Crg

Date: 10/26/2001

Sentence Date	Sentence Description	Status
10/26/2001	Sentence Resulting fm Plea	Active

Judge/Magistrate: WILLIAM PEAT ALDERTON

County Traffic Fine: \$50.00

Court Costs - prior to 6/6/03: \$16.00

Victims Assistance Fund: \$10.00

Warrant/Extradition Fee Sheriff: \$5.00

Scheduled Events

Date	Time	Event Description	Room
11/14/2001	1:30 PM	First Hrg-Traffic Infraction 1	

Judicial Officer: WILLIAM PEAT ALDERTON

Status: VACT-Vacated

Events

Event Date	Code	Event Description
10/03/2001	SACF	Summons and Complaint Filed
10/19/2001	LETR	Letter
10/26/2001	CLAD	Case Closed

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The People of Colorado vs SHANK, DONALD HERBERT

Status: CLSD

County Court, La Plata County

Case Num: 1998R 000142**Div/Room:** 4 **Type:** Motor Vehicle**Case File Date:** 03/02/1998**Case Close Date:** 03/26/1998**E-Filed:****Appealed:** N**Judge or Magistrate****Name** S LEIGH MEIGS **Bar Number:** 15710**Agency****Agency:** DUPD Durango Police Dept**Agency Case:** 98 31182**Ticket/Summons Num:** 81704**Arrest Num:****Sentence Date:** SCRT 03/26/1998**Parties**

Party	Name	Birthdate	Gender	Race
Defendant 1	SHANK, DONALD HERBERT	06/20/1949	M	W

Charges

Count	Status	Statute No.	Charge Description	Class
1	Main Charge	42-3-124(1)(a)	Expired License Plates	TIB
Offense Date: From: 02/27/1998 To: -- Time: -- BAC: 0				
Arrest Date: -- Time: -- Ticket Num: 81704				
Plea: Plea of Guilty Date: 03/26/1998				
Disposition: Guilty Date: 03/26/1998				

Sentence Date	Sentence Description	Status
03/26/1998	Sentence by Court	Active
Judge/Magistrate: S LEIGH MEIGS		
Court Costs - prior to 6/6/03: \$16.00		
Traffic Fine: \$5.00		
Victims Assistance Fund: \$9.00		
Traffic Fine: \$70.00 WV WAIVED		

Scheduled Events

Date	Time	Event Description	Room
03/26/1998	1:30 PM	Hearing on Advisement 4	
Judicial Officer: S LEIGH MEIGS			
Status: HELD-Hearing Held			

Events

Event Date	Code	Event Description
03/02/1998	SACF	Summons and Complaint Filed
03/26/1998	CLAD	Case Closed

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CERTIFICATE OF SERVICE

I hereby certify that I have, at Telluride, Colorado this 21st day of June, 2004, served a true copy of the documents denominated below on the parties and/or counsel listed below by the means of service shown below:

Documents Served

**REPLY IN SUPPORT OF CITY OF CREEDE'S MOTION TO STRIKE ALL FILINGS
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HISTORICAL FOUNDATION**

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Counsel for Adjacent Landowners

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cityofcreede@amigo.net


George M. Allen

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**BEFORE THE SURFACE TRANSPORTATION BOARD
OF THE UNITED STATES**

UNION PACIFIC RAILROAD	 	DOCKET NO. AB-33
COMPANY - ABANDONMENT	 	(SUB-NO. 132X)
EXEMPTION - IN RIO GRANDE	 	
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